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10/043,077

01/09/2002

Kenneth E. Flick

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08/11/2008

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EXAMINER

ZIMMERMAN, BRIAN A

ART UNIT

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH E. FLICK

Appeal 2007-3651
Application 10/043,077
Technology Center 2600

Decided: August 7, 2008

Before: JOSPEH F. RUGGIERO, ROBERT E. NAPPI, and
KEVIN F. TURNER, *Administrative Patent Judges.*

TURNER, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

INTRODUCTION

Appellant's Request for Rehearing (filed April 21, 2008) contends that we erred in our Decision on Appeal, entered March 7, 2008, affirming the rejection of all pending claims by the Examiner. We have reconsidered our decision of March 7, 2008 in light of Appellant's comments in the Request for Rehearing, and we find no error therein. We, therefore, decline to make any changes in our prior decision for the reasons which follow.

OPINION

Appellant argues that if one reference expressly addresses one problem, while a second reference addresses an entirely different problem, then “the person of ordinary skill in the art would be taught away [from] such a selective combination of the prior art.” (Req. for Reh’g. 4). While we may appreciate the novelty of Appellant’s argument, we can find no case law or statute that supports Appellant’s position. “A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 27 F.3d 551, 553 (Fed.Cir.1994). The alternate problems addressed in Ogino and Flick ‘571 cannot be said to discourage one of ordinary skill in the art from combining the references. While the objectives of the references may not, by themselves, suggest the combination, they in no way “teach away” from each other in the context of the obviousness rejection of claims 18-20 and 23.

Appellant also cites *In re Icon Health and Fitness, Inc.*, 496 F.3d 1374 (Fed. Cir. 2007), for the proposition that disparate approaches to different problems disclosed by cited references are not pertinent and are therefore non-obvious to be combined. (Req. for Reh’g. 4). We do not, however, find any support for such a position in the cited case. The section of the case cited by Appellant (Req. for Reh’g. 5) details that art that might normally be considered outside an inventor’s field may be considered analogous art if “reasonably pertinent to the problem addressed.” *Id* at 1379. However, this is quite different than Appellant’s apparent emphasis that the problems

addressed by the references determine their pertinence and combinability. Rather, the court finds that in determining the obviousness of a folding mechanism for a treadmill, analogous art “may come from any area describing hinges, springs, latches, counterweights, or other similar mechanisms.” *Id* at 1380.

With respect to the combination of Ogino and Flick ‘571 in the rejection of claims 18-20 and 23, Ogino discloses vehicle security systems and Flick ‘571 discloses home security systems, where both references come from the analogous art of security systems. Appellant has not argued that Ogino and Flick ‘571 come from nonanalogous arts, so the consideration made by the court of whether a secondary reference provides analogous art is not applicable. As such, we cannot agree with Appellant that one of ordinary skill in the art would not “logically” look to art within the same field of endeavor to determine obvious variations of an invention.

In a similar fashion, Appellant argues that the combination of Anzai and Flick ‘460, applied to the rejection of claims 30-39, 42, 43, 45, and 57-66, is improper because “the person of ordinary skill in the art, when modifying the biometric security system of Anzai et al., would not logically commend his attention to the data communications bus of Flick ‘460.” (Req. for Reh’g. 7). Given, however, that Anzai is directed to an authorization system for a motor vehicle, and Flick ‘460 is directed to vehicle security system, we find no bar to one of ordinary skill in the art from consideration of the references together.

Lastly, Appellant argues that “the Board’s stated motivation amounts to a conclusory statement of obviousness.” (Req. for Reh’g. 7). We note that since our opinion proffered no new grounds of rejection, we provided no

motivation ourselves, but did affirm the Examiner's rejections, including the rationales supplied by the Examiner for combining references. (Opinion p. 8). We do not find the Examiner's rationale for combining Anzai and Flick (Ans. 7) to be conclusory and we continue to find it to be proper and sufficient. As such, we fail to find Appellant's arguments to be compelling.

CONCLUSION

In summary, we have granted Appellant's Request for Rehearing to the extent that we have reconsidered our decision affirming the rejection of claims 18-23, 30-45, and 57-67, but we deny the Request with respect to making any changes therein.

DENIED

gvw

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